

(27,563)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 808.

WILLIAM J. GIVENS, APPELLANT,

vs.

FRED G. ZERBST, WARDEN OF THE UNITED STATES
PENITENTIARY AT ATLANTA, GEORGIA.

APPEAL TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF GEORGIA.

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1 United States District Court for the Northern District of Georgia, Northern Division.

WILLIAM J. GIVENS, Appellant,

versus

FRED G. ZERBST, Warden of the United States Penitentiary at Atlanta, Georgia, Appellee.

Habeas Corpus.

Petition.

To the Honorable William T. Newman, Presiding Judge of the United States District Court for the Northern District of Georgia:

The petition of William J. Givens respectfully shows:

1. That on the 30th day of October, 1918, he was put on trial before a General Court-Martial, convened at Camp Sevier, Greenville, South Carolina, for the crime of murder alleged against him, growing out of the death in said Camp, on September 28th, 1918, of one Will McLurkin, colored, alleged to be a soldier therein.

2. That on said day, to wit, the 30th day of October, 1918, he pleaded not guilty to the charge and specifications (so) alleged against him, and that thereupon, from day to day, the trial proceeded, until the 19th day of November, 1918, when the said court-martial found him not guilty of murder but guilty of manslaughter.

3. That on the said 19th day of November, 1918, the said court-martial, acting under said finding, sentenced your petitioner to be dismissed the service and to be confined at hard labor for ten years, in a place to be designated by the reviewing authority.

4. That on the 14th day of April, 1919, the said sentence was confirmed by the reviewing authority, and your petitioner was thereafter, to wit, on or about the 2nd day of May, 1919, confined thereunder in the Federal Prison at Atlanta, Georgia.

5. That the aforesaid sentence and confinement thereunder are illegal and void, for the reasons, among others, (1) that the record of said trial does not show that at the time of the commission of the crime in question your petitioner was an officer in the United States Army as was alleged against him, and not, therefore, amenable to military law; and (2) that said court-martial had no authority to hear and determine the said charge of murder, or the specifications thereunder, as alleged against your petitioner.

6. That your petitioner now is, and ever since on or about the 2nd day of May, 1919, has been, a prisoner, confined in said Federal

Prison, in the custody of Fred G. Zerbat, Warden thereof, under said illegal and void sentence pronounced against him on said 19th day of November, 1918, and confirmed on said 14th day of April, 1919, and is restrained of his liberty, in violation of the Constitution of the United States, and of the laws of the country.

Wherefore, your petitioner prays, that a writ of habeas corpus issue, directed to the said Fred G. Zerbat, Warden, commanding him to produce your petitioner before this Honorable Court, at the City of Atlanta, Georgia, or at some other convenient point, at such time as the Court shall direct, and that he then and there show the cause of your petitioner's detention, to the end that your petitioner may be discharged from custody.

And your petitioner will ever pray.

WILLIAM J. GIVENS,
Petitioner.

3 STATE OF GEORGIA,
 County of Fulton, ss:

I hereby certify, that on this 11th day of December, in the year 1919, before me, the subscriber, a Notary Public of the said State, in and for the said County, personally appeared William J. Givens, the within named petitioner, and made oath, in due form of law, that the matters and things set forth and alleged in said petition are true, to the best of his knowledge, information and belief.

Witness my hand and Notarial Seal.

[Seal H. F. Frick, Notary Public, Fulton County, Ga.]

H. F. FRICK,
Notary Public.

United States District Court. Filed in Clerk's Office, December 15th, 1919. O. C. Fuller, Clerk.

Order Granting Writ to Issue.

Ordered, this 7th day of January, in the year Nineteen Hundred and Twenty, on the foregoing petition as amended of William J. Givens, by the United States District Court for the Northern District of Georgia, that the writ of habeas corpus issue in this case, as prayed therein, and that the same be made returnable at 3 o'clock, p. m., on the 8th day of January, 1920, before me.

SAM'L H. SIBLEY,
*Judge of the United States District Court
for the Northern District of Georgia.*

Filed in Clerk's Office January 7, 1920.

O. C. FULLER,
Clerk,
By G. R. HOOD,
Deputy.

4 United States District Court for the Northern District of Georgia.

In the Matter of Petition of WILLIAM J. GIVENS for Writ of Habeas Corpus.

Amendment to Petition.

To the Honorable, William T. Newman, Presiding Judge of the United States District Court for the Northern District of Georgia:

The petitioner prays leave of the Court to amend the petition filed herein as follows:

1. By adding after the word "him" in the fourth line of paragraph 1 the following words: "under Article of War 92".

2. By striking out the last word in paragraph 2 and adding in lieu thereof the words: "violation of the Ninety-third Article of War".

3. By striking out paragraph 4 and inserting in lieu thereof the following:

"That on the 14th day of April, 1919, the said sentence was confirmed by the reviewing authority, and promulgated in orders of April 29th, 1919, and your petition was thereafter, to-wit, on or about the 2nd day of May, 1919, confined in the United States Penitentiary at Atlanta, Georgia, thereunder, a copy of said promulgated sentence being filed herewith, a part hereof, marked, "Exhibit 1".

4. By striking out paragraph 5 and adding in lieu thereof the following:

"That the said sentence, and confinement thereunder, are illegal and void, for the reasons, among others, (1) that the record of said trial does not show that at the time of the commission of the crime in question your petitioner was an officer in the United States Army, as alleged against him, nor that he was in any manner amenable to trial by court-martial; (2) that said court martial had no authority to hear and determine the said charge of murder, or the specification thereunder, as alleged against your petitioner (a) because

5 there was a time of peace in the United States when the crime in question was committed, (b) because the pleadings did not negative a time of peace; and (3) that said sentence, as so confirmed and promulgated did not include confinement in the United States Penitentiary at Atlanta, Georgia, or at any other place.

WILLIAM J. GIVENS,
Petitioner.

STATE OF GEORGIA,
County of Fulton:

On this 7th day of January, 1920, personally appeared Wm. J. Givens, petitioner named herein, and made oath in due form of law that the matters and things hereinbefore set out in this petition to amend are true as therein stated to his best knowledge, information and belief.

WILLIAM J. GIVENS.

Sworn to and subscribed before me this 7th day of January, 1920.

[Seal H. F. Frick, Notary Public, Fulton County, Ga.]

H. F. FRICK,
Notary Public, Georgia, Fulton County.

Order Granting Amendment.

Petition to amend granted as prayed, this 7th day of January, 1920.

SAM'L H. SIBLEY,
District Judge.

Filed in Clerk's Office January 7, 1920.

O. C. FULLER,
Clerk,
By G. R. HOOD,
Deputy.

War Department,
Washington, April 29, 1919.

General Court-martial Orders, No. 139:

Before a general court-martial which convened at Camp Sevier, S. C., October 30, 1918, pursuant to Special Orders, No. 172, October 10th, 1918, Headquarters, Camp Sevier, S. C., and of which Col. Orville H. Hall, Infantry, United States Army, was president, and Maj. Stanley F. Coar, Infantry, United States Army, judge advocate, was arraigned and tried—

Capt. William J. Givens, Infantry, United States Army.

Charge I. "Violation of the 92nd Article of War."

Specification. "In that Capt. William J. Givens, Inf., U. S. A., did at or near Camp Sevier, S. C., on or about the 28th day of Sept., 1918, with malice aforethought, wilfully deliberately, feloniously, unlawfully, and with premeditation kill one Pvt. Will Mc-

Lurkin, 3rd Prov. Dev. Rgt., a human being, by shooting him with a revolver."

To which charge and specification the accused pleaded, "Not guilty".

Findings.

Of the Charge, "Not guilty, but guilty of violation of the ninety-third Article of War."

Of the Specification of the Charge, "Guilty, except the words 'with malice aforethought', 'deliberately', 'and with premeditation'; of the excepted words 'not guilty.'"

Sentence.

"To be dismissed the service and to be confined at hard labor, and at such place as the reviewing authority may direct, for ten (10) years."

The sentence having been approved by the convening authority and the record of trial forwarded for the action of the President, under the 48th Article of War, the following are his orders thereon:

7 In the foregoing case of Captain William J. Givens, Infantry, the sentence is confirmed and will be carried into execution.

WOODROW WILSON.

The White House, 14 April, 1919.

116011-19.

[Seal. Office of Judge Advocate General. Official Copy.
War Department.]

"EXHIBIT 1."

(Reverse Side.)

(G. C. M. O. 139.)

Captain William J. Givens, Infantry, United States Army, ceases to be an officer of the Army from April 30, 1919.

By order of the Secretary of War:

FRANK MCINTYRE,
Major General, Acting Chief of Staff.

Official:

J. T. KERR,
Adjutant General.

Washington: Government Printing Office: 1919.

8 In the District Court of the United States for the Northern District of Georgia, Northern Division.

No. 10.

WILLIAM J. GIVENS, Petitioner,

vs.

FRED G. ZERBST, Warden of the United States Penitentiary at Atlanta, in the State of Georgia.

Habeas Corpus.

Amendment to Petition and Order.

To the Honorable, the Judge of Said Court:

The petitioner respectively prays leave to amend amended paragraph five (5) of his petition, by adding thereto the following:

"and (4) because the said court-martial which tried the accused was not legally constituted; in that the officer who appointed the court-martial, was, as is disclosed (a) by the precept shown in the Record, (b) by his action in reviewing said case, and (c) by the General Court Martial Order No. 139, a part of the amended paragraph (4) of the petition herein, promulgating the sentence in this case, a Camp Commander, and, as such, had no authority under the Articles of War covering the appointment of court-martials, to appoint other than a Special Court-Martial.

And petitioner will ever pray.

JNO. S. STRAHORN,
Attorney for Petitioner.

Order.

The foregoing amendment allowed and ordered filed. In open Court this the 24th day of January, 1920.

SAM'L H. SIBLEY,
United States Judge.

Filed in Clerk's Office Jan. 24, 1920.

O. C. FULLER,
Clerk,
By J. D. STEWARD,
Deputy.

9 In the District Court of the United States for the Northern District of Georgia, Northern Division, October Term, A. D. 1919.

No. 10.

WILLIAM J. GIVENS, Petitioner,

vs.

FRED G. ZERBST, Warden, United States Penitentiary at Atlanta, in the State of Georgia, Respondent.

Petition for Writ of Habeas Corpus.

The President of the United States of America, to Fred G. Zerbst, Warden of the United States Penitentiary, at Atlanta, in the State of Georgia, Greeting:

We command you that the body of William J. Givens, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before the Honorable Samuel H. Sibley, Judge of our District Court of the United States in and for the Northern District of Georgia, on the Eighth (8th) day of January, A. D. 1920, at three o'clock in the afternoon, in the United States District Court room in the City of Atlanta, Georgia, to do and receive all and singular those things which the said Honorable Samuel H. Sibley, Judge of said Court, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness the Honorable Samuel H. Sibley, United States District Judge for the Northern District of Georgia, and the seal of the said Court, at Atlanta, Georgia, this the 7th day of January A. D. 1920.

[Seal U. S. District Court, N. D. Georgia.]

O. C. FULLER,

*Clerk of the United States District Court
for the Northern District of Georgia.*

10 I hereby certify that I have this day served the Original habeas corpus as herein described on Fred G. Zerbst, Warden, personally.

This 8th day of January, 1920.

HOWARD THOMPSON,

U. S. Marshal,

By C. H. LIVSEY,

Deputy.

Returned into Clerk's Office this 8th day of January, A. D. 1920.

O. C. FULLER,

Clerk,

By J. D. STEWARD,

Deputy.

Order Discharging Writ.

In conformity with the opinion of the Court this date filed, the within writ of habeas corpus is hereby discharged and the petitioner remanded to custody.

This 2nd day of February, 1920.

SAM'L H. SIBLEY,
U. S. Judge.

- 11 In the District Court of the United States for the Northern District of Georgia, Northern Division.

No. 10.

WILLIAM J. GIVENS, Petitioner,

vs.

FRED G. ZERBST, Warden of United States Penitentiary, Atlanta, Georgia.

Habeas Corpus.

Answer of Respondent.

And now comes Fred G. Zerbst, Warden of the United States Penitentiary at Atlanta, Georgia, and answering the writ of habeas corpus served on him in this case, says:

1. That William J. Givens was received at the United States Penitentiary at Atlanta, Georgia, on May 2, 1919, under and by virtue of a commitment and documents of which copies are hereto attached marked respectively exhibits "A", "B", and "C", which are referred to and made a part of this response. That by virtue of the aforesaid commitment and documents, Respondent has since the 2nd day of May, 1919, been holding and is now holding the said William J. Givens in said penitentiary.

2. Respondent further avers that he has reason to believe and does believe and therefore states the fact to be, that said General Court Marshal which tried the Petitioner, William J. Givens, was legally appointed and convened and had lawful jurisdiction over him and over the subject matter of the charges against him; that said General Court Marshal was lawfully convened by direction of the President pursuant to General Orders No. 56, dated "War Department, June 13, 1918", duly made and promulgated by the President, a copy of which said orders is hereto attached marked exhibit "D", and is referred to and made a part hereof.

12 3. Respondent further answering says, that he has reason to believe and does believe and therefore states the fact to be, that the findings of the Court Martial and the sentence imposed

by it were approved by Brigadier General F. H. French, the Commanding Officer at Camp Sevier who appointed said Court Martial; that the record of the trial and the sentence imposed by the Court Martial was made by him forwarded to the Adjutant General of the Army for action by the President, under Article of War 48; that the said record of trial was forwarded by the Secretary of War to the President for confirmation, pursuant to the requirements of the 48th Article of War; that the sentence imposed by the Court Martial was confirmed by the President and the penitentiary at Atlanta, Georgia, designated by him as the place of confinement.

4. Respondent answering further says he has reason to believe and does believe and therefore states the fact to be, that the method and procedure by which the place of confinement of the Petitioner, William J. Givens, was designated and his sentence carried into execution, was and is in conformity with long and well established practice of the President and the War Department in such cases.

5. Answering further Respondent denies that he unlawfully restrains the said Petitioner, William J. Givens, of his liberty, and says that the true cause of the detention and custody of the said William J. Givens is hereinbefore set out in this response.

6. Respondent further avers that he has reason to believe and does believe and therefore alleges the fact to be, that the trial, conviction and sentence of the said William J. Givens, and the imprisonment which he is now undergoing in the execution of said sentence, are lawful.

Wherefore, Respondent prays that the writ of habeas corpus in this case be dismissed, and that the Petitioner, William J. Givens, be remanded to the custody of Respondent.

13

FRED G. ZERBST,
Warden, U. S. Penitentiary.

GEORGIA,
Fulton County:

Before the undersigned officer personally appeared Fred G. Zerbst, Warden of the United States Penitentiary at Atlanta, Georgia, who on oath says that the statements contained in the foregoing answer as being of his own knowledge are true, and that the statements therein contained made on information and belief he verily believes to be true.

FRED G. ZERBST,
Warden, U. S. Penitentiary.

Sworn to and subscribed before me this 24th day of January, 1920.

JON DEAN STEWARD,
Deputy Clerk U. S. Court,
Northern District of Georgia.

"EXHIBIT A."

War Department.

j-k 390.

The Adjutant General's Office.

Washington, April 29, 1919.

In reply refer to 201 (Givens, William J.)

The Warden, United States Penitentiary,
Atlanta, Georgia.

SIR:

I have the honor to transmit to you herewith for your information, copy of a telegram to the Commanding General, Camp Sevier, S. C., directing him to send Captain William J. Givens, Infantry, to Atlanta and deliver him to the United States Penitentiary there. It will be noted that Captain Givens has been sentenced by court-martial to confinement at hard labor for a period of ten years and that the sentence has been approved and ordered carried into execution by the President, and that the United States Penitentiary at Atlanta has been designated as the place of confinement. The official orders promulgating the sentence and ordering its execution will be published and copy sent to you in due time.

Very respectfully,

JOHN B. SHUMAN,
Adjutant General.

1 Incl.

A true copy.

January 10, 1920.

A. C. ADERHOLD,
Record Clerk.

"EXHIBIT B."

A. G. 201 (Givens, William J.) jk-390.

War Department Telegram.

Official Business.

Washington, April 29, 1919.

Commanding General, Camp Sevier, South Carolina:

Sentence of dismissal and confinement at hard labor for ten years imposed by general court-martial in case of Captain William J. Givens Infantry confirmed by President period Captain Givens ceases to be an officer of Army from April thirtieth nineteen nineteen

period United States Penitentiary Atlanta Georgia designated as place of confinement period

Notify Captain Givens at once and telegraph this office attention room three ninety date receipt by him of this notification period Place Captain Givens in confinement on receipt of this if not already confined and send him not before April thirtieth under proper guard to Atlanta and deliver him to Penitentiary

[SEAL.]

KERR.

Night Government.

A true Copy.

January 10, 1920.

A. C. ADERHOLD,
Record Clerk.

15

"EXHIBIT C."

(G. C. M. O. 139.)

General Court-Martial Orders, No. 139.

War Department,
Washington, April 29, 1919.

Before a general court-martial which convened at Camp Sevier, S. C., October 30, 1918, pursuant to Special Orders, No. 172, October 10, 1918, Headquarters, Camp Sevier, S. C., and of which Col. Orville H. Hall, Infantry, United States Army, was president, and Maj. Stanley F. Coar, Infantry, United States Army, judge advocate, was arraigned and tried—

Captain William J. Givens, Infantry, United States Army.

Charge I. "Violation of the 92nd Article of War."

Specification.—"In that Captain William J. Givens, Inf. U. S. A., did at or near Camp Sevier, S. C., on or about the 28th day of Sept., 1918, with malice aforethought; willfully, deliberately, feloniously, unlawfully, and with premeditation kill one Pvt. Will McLurkin, 3rd, Prov. Dev. Rgt., a human being, by shooting him with a revolver."

To which charge and specification the accused pleaded, "Not guilty."

Findings.

Of the Charge, "Not guilty, but guilty of violation of the ninety-third Article of War."

Of the Specification of the Charge, "Guilty, except the words 'with malice aforethought,' 'deliberately,' and 'with premeditation'; of the excepted words 'Not guilty.'"

Sentence.

"To be dismissed the service and to be confined at hard labor, at such place as the reviewing authority may direct, for ten (10) years."

The sentence having been approved by the convening authority and the record of trial forwarded for the action of the President, under the 48th Article of War, the following are his orders
16 thereon:

In the foregoing case of Captain William J. Givens, Infantry, the sentence is confirmed and will be carried into execution.

WOODROW WILSON.

The White House, 14 April, 1919.

116011-19.

Captain William J. Givens, Infantry, United States Army, ceases to be an officer of the Army from April 30, 1919.

By order of the Secretary of War:

FRANK McINTYRE,

Major General, Acting Chief of Staff.

Official:

J. T. KERR,

Adjutant General.

A true Copy.

January 10, 1920.

A. C. ADERHOLD,

Record Clerk.

"EXHIBIT D."

(G. O. 56.)

General Orders, No. 56.

War Department,
Washington, June 13, 1918.

I. Transportation will be furnished civilian attendants accompanying the remains of deceased officers, soldiers, nurses, field clerks, or civilian employees only when such attendants are civilian employees in the military service. (293. 12 A. G. O.)

II. Appendix II, General Orders, No. 49, War Department, 1916, is amended by inserting after the words "course of training for Engineer units of the senior division" on page 31, the following paragraph:

This course may be modified in individual cases for the purposes of adjusting it to the existing courses of the instructions, and of allowing credits for subject matter in such courses. Each modifi-

- 17 cation, however, must be submitted to the Chief of Engineers for his written approval before becoming effective under these regulations. (211. 33, A. G. O.).

III. By direction of the President the commanding officer of each of the following camps is empowered, under the 8th Article of War, to appoint general court-martial whenever necessary:

Camp Devens, Ayer, Mass.
 Camp Upton, Yaphank, N. Y.
 Camp Dix, Wrightstown, N. J.
 Camp Meade, Annapolis, Md.
 Camp Lee, Petersburg, Va.
 Camp Jackson, Columbia, S. C.
 Camp Gordon, Atlanta, Ga.
 Camp Sherman, Chillicothe, Ohio.
 Camp Taylor, Louisville, Ky.
 Camp Custer, Battle Creek, Mich.
 Camp Grant, Rockford, Ill.
 Camp Pike, Little Rock, Ark.
 Camp Dodge, Des Moines, Iowa.
 Camp Funston, Fort Riley, Kans.
 Camp Travis, San Antonio, Tex.
 Camp Lewis, American Lake, Wash.
 Camp Greene, Charlotte, N. C.
 Camp Logan, Houston, Tex.
 Camp Forrest, Chickamauga Park, Ga.
 Camp Wheeler, Macon, Ga.
 Camp Freemont, Palo Alto, Cal.
 Camp Wadsworth, Spartanburg, S. C.
 Camp Hancock, Augusta, Ga.
 Camp McClellan, Anniston, Ala.
 Camp Sevier, Greenville, S. C.
 Camp McArthur, Waco, Tex.
 Camp Cody, Deming, N. Mex.
 Camp Bowie, Fort Worth, Tex.
 Camp Sheridan, Montgomery, Ala.
 Camp Shelby, Hattiesburg, Miss.
 Camp Beauregard, Alexandria, La.
 Camp Kearney, Linda Vista, Cal.
 Camp Mills, Long Island, N. Y.

The Jurisdiction of commanding officers of camps under authority of this order shall be limited to persons subject to military law who are serving at camps commanded by them and who do not belong to tactical divisions serving thereat, except that the commanding general of a tactical division may, in his discretion, direct members of his division against whom charges have been preferred to report or be turned over to the commanding officer of the camp at which his division is serving for trial by general court-martial, transmitting to the commanding officer of the camp the charges and all papers in the case. Members of a division so ordered to report or to be turned over to the commanding officer of a camp for trial shall

- 18 be considered detached from the division until the charges pending against them have been disposed of, and the commanding officer of the camp shall have jurisdiction to bring them to trial. (250. 42, A. G. O.)

IV. 1. The following cloths are adopted as standard materials for officer's uniforms, and all uniforms for officers made in the future in the United States will be of one of these prescribed standards:

For coat and breeches. Summer wear:

a. An O. D. cotton.

b. A 13-ounce all-wool worsted gaberdine.

For coats, breeches, and overcoats:

a. A 12-ounce worsted serge.

b. A 17-ounce whipcord.

c. A 21-ounce whipcord or elastique.

For riding breeches:

a. A 24-ounce Bedford cord.

For overcoats:

a. A 30-ounce Melton or kersey.

Samples, according to standards adopted and on file in the office of the Quartermaster General, will be supplied to all local quartermasters and kept available for inspection by officers. All cloth will be supplied at cost by the Quartermaster Corps, and a sufficient quantity will be kept on hand by the various depot, camp, post, and station quartermasters to meet the contemplated requirements.

2. The Quartermaster Corps will invite bids for making uniforms. The contracts will be let at a specified cost per uniform, one contract (or more if necessary) to be let for each general supply depot; all uniforms or material purchased within the zone of jurisdiction of any depot to be supplied under the provisions of the contract of such depot. Contracts will be let in the usual manner to the lowest responsible bidder, care being taken that only firms experienced in making uniforms to measure should be considered responsible in this connection.

19 3. Contractors must have representatives at all camps, posts, and stations in the territory covered by their contracts, not necessarily living there, but to go there upon call of the local quartermaster, to measure, fit, and make delivery of uniforms and such alterations as may be required, the Government to furnish a suitable room or building for this purpose. Other tailoring in the nature of repairs, pressing, etc., is authorized, at rates to be determined by local commanding officers. Every garment must be guaranteed by the contractor to fit, and be made to fit, the officers' acceptance being proof thereof. All changes or alterations will be made at the expense of the contractor.

4. All properly fitted garments not delivered through no fault of the contractor will be taken by the local quartermaster at contract

price for delivery to officers, if practicable. If this is impracticable, the garments will be placed in stock for sale or issue.

5. Orders for uniforms will be made through the office of the local quartermaster, who will have supervision over the contractor's agent. The cost of the uniform will be the contract price plus the cost of the cloth. Officers purchasing uniforms will pay the local quartermaster the same, who in turn will settle with the contractor.

6. In addition to furnishing cloth to contractors as above noted, the Quartermaster Corps will furnish cloth at cost direct to officers who desire to have tailoring done by firms with which the Government does not have a contract.

7. Upon notice from the Quartermaster General that firms with which contracts have been made are prepared to make uniforms, all other contracts or agreements made by any branch or department of the Army for making officers' uniforms which interfere with the operation of this order, or contract executed in compliance therewith, will be terminated at once.

(421, A. G. O.)

20 By order of the Secretary of War:

PEYTON C. MARCH,
General, Chief of Staff.

Official:

H. P. McCAIN,
The Adjutant General.

(Washington: Government Printing Office: 1918.)

United States of America.

War Department,

Washington, January 8, 1920.

I hereby certify that the papers hereto attached are true and complete copies of official records on file in The Adjutant General's Office of the War Department.

P. C. HARRIS,
Major General, U. S. Army,
The Adjutant General.

I hereby certify that P. C. Harris, who signed the foregoing certificate, is the The Adjutant General of the Army, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof I, Newton D. Baker, Secretary of War, have hereunto caused the Seal of the War Department to be affixed and my name to be subscribed by the Assistant and Chief Clerk of

the said Department, at the City of Washington, this 8th day of January, 1920.

[Seal United States of America. War Office.]

NEWTON D. BAKER,

Secretary of War,

By JOHN C. SCOFIELD,

Assistant and Chief Clerk.

War Department.
Standard Form No. 13.
3-1826.

21

Western Union.

Telegram.

Anniston, Ala., May 7, 1918.

From William J. Givens, First Lieut. Inf. U. S. N. G.
To Adjutant General of the Army.
Subject Acceptance of Commission.

I hereby accept my commission as First Lieutenant of Infantry
in the National Guard of the United States.

(Signed)

WILLIAM J. GIVENS,

1st Lieut. Inf.

Received A. G. O. May 9, 1918.

Headquarters, Provisional Casual Battalion,

Camp Sevier, Greenville, S. C., May 21, 1918.

From: First Lieut. William J. Givens, Inf. U. S. N. G.
To: The Adjutant General of the Army.
Subject: Personal Report.

1. In compliance with telegraphic instructions of May, 4, 1918, from the Adjutant General of the Army, to the Commanding Officer of Third Officers' Training Camp, Camp McClellan, Alabama, I proceeded on May 7th, 1918, to Camp Sevier, Greenville, S. C., reporting thru Assistant Division Adjutant, Major J. S. Caldwell, to Brig. Gen. Gatley for duty, May 10, 1918.

WILLIAM J. GIVENS,

1st Lieut. Inf. U. S. N. G.

Received A. G. O., May 23, 1918.

Western Union.

Telegram.

1918, Sep. 27, Am. 9:30.

A158 An 47 Govt.

Camp Sevier, S. C. 914A 27.

Adjutant General of the Army,

Room 363 Washington, D. C.

22 Pursuant to telegraphic instructions War Department
Dated Sept. 23, 1918, I hereby accept my commission as
Captain of Infantry United States Army.

WILLIAM J. GIVENS,

Capt. Infy. U. S. A. Commanding Co. B.

Received A. G. O. Sep. 27, 1918.

The President of the United States of America, to all who shall see
these presents, greeting:

Know ye, that reposing special trust and confidence in the
patriotism, valor, fidelity and abilities of William Joseph Givens I
do appoint him Captain of Infantry in the United States Army to
rank as such from the ninth day of September nineteen hundred
and eighteen. He is therefore carefully and diligently to discharge
the duty of the office to which he is appointed by doing and per-
forming all manner of things thereunto belonging.

And I do strictly charge and require all Officers and Soldiers
under his command to be obedient to his orders as an officer of his
grade and position. And he is to observe and follow such orders
and directions, from time to time, as he shall receive from me, or
the future President of the United States of America, or the General
or other Superior Officers set over him, according to the rules and
discipline of War.

This Commission to continue in force during the pleasure of the
President of the United States, for the time being and for the period
of the existing emergency, under the provisions of an Act of Con-
gress approved May eighteen, nineteen hundred and seventeen.

Given under my hand at the City of Washington, this ninth day
of September, in the year of our Lord one thousand nine hundred
and eighteen and in the one hundred and forty-third year of the
Independence of the United States.

23 By the President:

B. CROWELL,

The Assistant Secretary of War.

The Adjutant General's Office.

Recorded: Feb. 12, 1919.

R. G. PAYNE,

Adjutant General.

A. G. 201 (Givens, William J.) jk 390.

Commanding General,
Camp Sevier, South Carolina.

April 29, 1919.

Sentence of dismissal and confinement at hard labor for ten years imposed by general court-martial in case of Captain William J. Givens Infantry confirmed by President period Captain Givens ceases to be an officer of the Army from April thirtieth nineteen nineteen period United States Penitentiary Atlanta Georgia designated as place of confinement period Notify Captain Givens at once and telegraph this office attention room three ninety date receipt by him of this notification period Place Captain Givens in confinement on receipt of this if not already confined and send him not before April thirtieth under proper guard to Atlanta and deliver him to Penitentiary.

Night Government.

KERR.

John B. Shannon.

Out

Officers' Division.

3 P. M.

Western Union.

Telegram.

A 288D 5 0 Govt

1919 Apr 30 PM 546

Camp Jackson SC 525P 30

The Adjutant General of the Army

Attention Room Three Ninety Washington DC
Retel April Thirtieth to Commanding Officer Camp Sevier SC

24 Reference sentence adjudged Captain W J Givens was quoted
in wire to this camp where Captain Givens is in confinement
period Sentence was read to Captain Givens this Date.

LEE.

Received A. G O May 1, 1919.

United States of America.

War Department.

Washington, January 20, 1920.

I hereby certify that the official records on file in The Adjutant
General's Office of the War Department show that William J. Giv-

one was called into the service of the United States as a member of a National Guard organization, June 29, 1916; that he was appointed first lieutenant, National Guard, April 19, 1918; that he accepted the appointment May 7, 1918; that he was appointed Captain of Infantry, United States Army, September 9, 1918, and that he accepted the commission September 25, 1918.

P. C. HARRIS,
Major General, U. S. Army,
The Adjutant General of the Army.

I hereby certify that P. C. Harris, who signed the foregoing certificate, is the The Adjutant General of the Army, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof I, Newton D. Baker, Secretary of War, have hereunto caused the Seal of the War Department to be affixed and my name to be subscribed by the Assistant and Chief Clerk of the said Department, at the City of Washington, this 20th day of January, 1920.

[Seal United States of America. War Office.]

NEWTON D. BAKER,
Secretary of War,
By JOHN C. SCOTFIELD,
Assistant and Chief Clerk.

War Department,
Standard Form No. 13.
3-1826.

25

United States of America.

War Department.

Washington, January 20, 1920.

I hereby certify that the attached five typewritten sheets are true copies of the following papers on file in the office of the Judge Advocate General, United States Army, in connection with the record of trial by general court-martial at Camp Sevier, South Carolina, October 30, 1918, in the case of Captain William J. Givens, Infantry, United States Army:

1. Action of reviewing authority, Brigadier General F. H. French.

2. (In three sheets) Letter of Acting Secretary of War, transmitting case to President and enclosing draft of Executive Order.

3. Action of the President confirming sentence.

E. A. KREGER,
Acting Judge Advocate General,
United States Army.

I hereby certify that E. A. Kreger, who signed the foregoing certificate, is the Acting Judge Advocate General, United States Army, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof I, Newton D. Baker, Secretary of War, have hereunto caused the Seal of the War Department to be affixed and my name to be subscribed by the Assistant and Chief Clerk of the said Department, at the City of Washington, this 20th day of January, 1920.

[Seal United States of America. War Office.]

NEWTON D. BAKER,
Secretary of War
By JOHN C. SCOFIELD,
Assistant and Chief Clerk.

War Department.
Standard Form No. 13.
3-1826.

(1)

26 Headquarters Camp Sevier, S. C., Dec. 6, 1918.
To the Adjutant General of the Army, Washington, D. C.

In the foregoing case of Captain William J. Givens, Inf., the sentence is approved and the record of trial is forwarded for action under the 48th Article of War.

(Signed)

F. H. FRENCH,
F. H. FRENCH,
Brigadier-General, Commanding.

(2)

War Department.
Washington, March 26, 1919.

The President:

Herewith transmitted to you is the record of trial by general court-martial at Camp Sevier, South Carolina, on October 30, 1918, of Captain William J. Givens, Infantry, U. S. A., who was charged with murder in violation of the 92nd Article of War. The Court in its finding eliminated the elements of that offense and found him guilty of manslaughter, in violation of the 93rd Article of War. He was sentenced to be dismissed the service, and to be confined at hard labor at such place as the reviewing authority might direct for ten (10) years. The reviewing authority approved the sentence and forwarded the record for your action under the 48th Article of War.

The Judge Advocate General, upon a review of the record, finds that the evidence, although mostly circumstantial, was sufficient to show that the accused sometime in the early morning of September 28, 1918, at Camp Sevier, South Carolina, shot and killed one Pri-

vate Will McLurkin by shooting him with a revolver, although it failed to show any motive for the killing, or the circumstances under which it occurred.

Accused testified as his sole defense that on the night of the shooting he had been drinking ethyl alcohol and was "dead drunk" and had only a hazy recollection of the events of the night. He
27 said that he remembered talking to someone and having fired a shot, but he did not remember whether there was anyone with him when he fired the shot; that the next thing he remembered he was being awakened in his quarters on the morning of September 28th. In a confession he said he remembered having explained to a person with him before firing the shot, "Why God Damn You, I will kill you."

During the trial the question of the sanity of the accused became an issue in the case and a medical board was appointed in accordance with the Manual for Courts-Martial for the purpose of examining into and reporting whether the accused had, at the time of the shooting, the necessary criminal mind to commit the offense alleged. The board found that the accused gave no evidence of insanity, either past or present.

The Judge Advocate General recommends that the sentence be confirmed and the United States Penitentiary, Atlanta, Georgia, be designated as the place of confinement, such confinement being authorized by the common law as described in the 42nd Article of War and by section 802 of the Code of the District of Columbia; dismissal from the service being authorized by the 93rd Article of War. I concur in the recommendation of the Judge Advocate General and herewith inclose a draft of executive order designed to carry this recommendation into effect, should it meet with your approval.

Very respectfully,

(Signed)

BENEDICT CROWELL,
Acting Secretary of War.

2 Inclos.

In the foregoing case of Captain William J. Givens, Infantry, the sentence is confirmed and will be carried into execution.
The White House, 1919.

(3)

28 In the foregoing case of Captain William J. Givens, Infantry, the sentence is confirmed and will be carried into execution.

(Signed)

WOODROW WILSON.

The White House, 14 April, 1919.

United States of America.

War Department.

Washington, January 20, 1920.

I hereby certify that upon April 29, 1919, Brigadier General J. T. Kerr was Adjutant General in Charge of Office, said Office being the Office of The Adjutant General of the Army, Washington, D. C.; that said Brigadier General Kerr occupied said position having been appointed thereto by reason of being the senior officer on duty in The Adjutant General's Office in the absence of The Adjutant General, and that by virtue of said position said Brigadier General Kerr was authorized to sign official messages, acting by direction of the Secretary of War, carrying out the orders of the President, and that he did act in pursuance of such authority in dispatching from said office a telegram in the following words and figures:

April 29, 1919.

Commanding General, Camp Sevier, South Carolina:

Sentence of dismissal and confinement at hard labor for ten years imposed by general court-martial in case of Captain William J. Givens Infantry confirmed by the President period Captain Givens ceases to be officer of Army from April thirtieth nineteen nineteen period United States Penitentiary Atlanta Georgia designated as place of confinement period Notify Captain Givens at once and telegraph this office attention room three ninety date receipt by him of this notification period Place Captain Givens in confinement on receipt of this if not already confined, and send him not before April thirtieth under proper guard to Atlanta and deliver him to Penitentiary.—KERR.

P. C. HARRIS,

Major General, U. S. Army,
The Adjutant General.

I hereby certify that P. C. Harris, who signed the foregoing certificate, is the The Adjutant General of the Army, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof I, Newton D. Baker, Secretary of War, have hereunto caused the Seal of the War Department to be affixed and my name to be subscribed by the Assistant and Chief Clerk of the said Department, at the City of Washington, this 20th day of January 1920.

[Seal United States of America. War Office.]

NEWTON D. BAKER,

Secretary of War,

By JOHN C. SCOFIELD,

Assistant and Chief Clerk.

War Department.

Standford Form No. 13.

3-1826.

30

United States of America.

War Department.

Washington, January 20, 1920.

I hereby certify that the telegram of April 29, 1919, setting forth the sentence in the case of Captain William J. Givens and designating the place of his confinement under the sentence was in conformity with the well-established practice and procedure of the War Department in such cases.

P. C. HARRIS,
Major General, U. S. Army,
The Adjutant General.

I hereby certify that P. C. Harris, who signed the foregoing certificate, is the The Adjutant General of the Army, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof I, Newton D. Baker, Secretary of War, have hereunto caused the Seal of the War Department to be affixed and my name to be subscribed by the Assistant and Chief Clerk of the said Department, at the City of Washington, this 20th day of January, 1920.

[Seal United States of America. War Office.]

NEWTON D. BAKER,
Secretary of War,
By JOHN C. SCOFIELD,
Assistant and Chief Clerk.

War Department.

Standard Form No. 13.

3-1826.

31

United States of America.

War Department.

Washington, January 20, 1920.

I hereby certify that on April 30, 1918, Major Alva Lee, National Army, now stationed at Salt Lake, Utah, was Assistant Chief of Staff, 81st Division, at Camp Jackson, South Carolina, having been appointed as such Assistant Chief of Staff by Confidential Order No. 46, paragraph 6, War Department, February 25, 1918; and that upon that date he, in performance of his duty incumbent upon him as such Assistant Chief of Staff, did transmit to the Adjutant General of the Army an official report, in the form of a telegram in the following words and figures:

Western Union Telegram.

Camp Jackson, S. C., April 30, 1919.

The Adjutant General of the Army:

Attention Room Three Ninety, Washington, D. C.

Retel April Thirtieth to Commanding Officer, Camp Sevier, S. C. reference sentence adjudged Captain W. J. Givens was quoted in wire to this camp where Captain Givens is in confinement period Sentence was read to Captain Givens this date.

LEE.

Received A. G. O., May 1, 1919.

P. C. HARRIS,
Major General, U. S. Army,
The Adjutant General of the Army.

I hereby certify that P. C. Harris, who signed the foregoing certificate, is the The Adjutant General of the Army, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof I, Newton D. Baker, Secretary of War, have hereunto caused the Seal of the War Department to be affixed and my name to be subscribed by the Assistant and Chief Clerk of the said Department, at the City of Washington, this 20th day of January, 1920.

[Seal United States of America. War Office.]

.32

NEWTON D. BAKER,
Secretary of War,
By JOHN C. SCOFIELD,
Assistant and Chief Clerk.

War Department.

Standard Form No. 13.

3-1826.

33

United States of America.

War Department.

Washington, January 20, 1920.

I hereby certify that the attached copy of General Court-Martial Orders, No. 139, War Department, April 29, 1919, is a true copy of an order promulgating the sentence of the General Court-Martial in the case of Captain William J. Givens, the original of which is on file in the War Department.

P. C. HARRIS,
Major General, U. S. Army,
The Adjutant General.

I hereby certify that P. C. Harris, who signed the foregoing certificate, is The Adjutant General of the Army, and that to his certification as such full faith and credit are and ought to be given.

In testimony whereof I, Newton D. Baker, Secretary of War, have hereunto caused the Seal of the War Department to be affixed and my name to be subscribed by the Assistant and Chief Clerk of the said Department, at the City of Washington, this 20th day of January, 1920.

[Seal United States of America. War Office.]

NEWTON D. BAKER,
Secretary of War,
By JOHN C. SCOTFIELD,
Assistant and Chief Clerk.

War Department.

Standard for No. 13.

3-1826.

34

G. C. M. O.-139.)

War Department,

Washington, April 29, 1919.

General Court-Martial Orders No. 139.

Before a general court-martial which convened at Camp Sevier, S. C., October 30, 1918, pursuant to Special Orders, No. 172, October 10, 1918, Headquarters, Camp Sevier S. C., and of which Col. Orville H. Hall, Infantry, United States Army, was president, and Maj. Stanley F. Coar, Infantry, United States Army, judge advocate, was arraigned and tried—

Capt. William J. Givens, Infantry, United States Army.

Charge I.—“Violation of the 92nd Article of War.”

Specification.—“In that Capt. William J. Givens, Inf., U. S. A., did, at or near Camp Sevier, S. C., on or about the 28th day of Sept., 1918, with malice aforethought, wilfully, deliberately, feloniously, unlawfully, and with premeditation kill one Pvt. Will McLurkin, 3rd Prov. Dev. Regt., a human being, by shooting him with a revolver.”

To which charge and specification the accused pleaded, “Not Guilty.”

Findings.

Of the charge, “Not guilty, but guilty of violation of the ninety-third Article of War.”

Of the Specification of the Charge, “Guilty, except the words ‘with malice aforethought,’ ‘deliberately,’ and ‘with premeditation’; of the excepted words ‘not guilty.’”

Sentence.

"To be dismissed the service and to be confined at hard labor, at such place as the reviewing authority may direct, for ten (10) years."

The sentence having been approved by the convening authority and the record of the trial forwarded for the action of the President, under the 48th Article of War, the following are his orders thereon:

In the foregoing case of Captain William J. Givens, Infantry, the sentence is confirmed and will be carried into execution.

WOODROW WILSON.

35 The White House, 14 April, 1919.

116011-19.

Captain William J. Givens, Infantry, United States Army, ceases to be an officer of the Army from April 30, 1919.

By order of the Secretary of War:

FRANK MCINTYRE,

Major General, Acting Chief of Staff.

Official:

J. T. KERR,

Adjutant General.

Washington: Government Printing Office, 1919.

36 In the District Court of the United States for the Northern District of Georgia.

No. 10, Habeas Corpus.

In the Matter of Petition of WILLIAM J. GIVENS, Petition for Writ of Habeas Corpus.

Traverse to Respondent's Answer.

The petitioner traverses the answer of the Respondent filed herein on the 24th day of January, 1920, and especially denies that part thereof wherein it is alleged that the President designated the United States Penitentiary at Atlanta, Georgia, as a place of confinement as therein set out.

WILLIAM J. GIVENS,

Petitioner.

JOHN S. STRAHORN,

Attorney.

Sworn to before me this 24th day of January, 1920.

JON DEAN STEWARD,

Chief Deputy Clerk of the United States District Court for the Northern District of Georgia.

Filed in Open Court January 24, 1920.

O. C. FULLER,

Clerk,

By JON DEAN STEWARD,

Deputy Clerk.

37 In the District Court of the United States for the Northern District of Georgia.

Ex parte WILLIAM J. GIVENS.

Habeas Corpus.

Opinion of the Court.

The return of the writ showed the applicant held in the United States Penitentiary, Atlanta, Georgia, since May 2nd, 1919, under sentence by a court martial. The exhibited record shows the arraignment and trial of Captain William J. Givens, Infantry, United States Army, on October 30th, 1918, before a General Court Martial convened at Camp Sevier, South Carolina, under Special Order No. 172, Headquarters, Camp Sevier, South Carolina, on a violation of the 92nd Art. of War and specifications, in effect, of murdering a private on September 28th, 1918, by premeditated shooting. There is a plea of "not guilty," and a finding of not guilty of the charge made but guilty of violation of the 93rd Art. of War, with specifications amounting to manslaughter. The sentence is "To be dismissed the service and to be confined at hard labor at such place as the reviewing authority may direct for ten years." The sentence having been approved by the convening authority and the record of the trial forwarded for the action of the President, under the 48th Art. of War, the following order is made thereon: "In the foregoing case of Captain William J. Givens, Infantry, the sentence is confirmed and will be carried into execution. Woodrow Wilson, The White House, 14th April, 1919."

The contentions of the applicant are:

1. The Court-Martial was not legal because convened by a Camp Commander, who could only call a special court martial.
2. The record of the trial does not show he was an officer as alleged, nor in any manner amenable to trial by court martial.
3. The court martial had no authority to try him for murder because (a) there was a time of peace in the United States when the crime was committed, and (b) the pleadings do not negative a time of peace.
- 38 4. The sentence as promulgated did not include confinement in the United States Penitentiary at Atlanta or any other place.

1. The Commander of a Camp may, as such and on his own motion, call a special court martial under the 9th Art. of War, but a special court martial may not try a captain; Art. 13. There is, however, in evidence General Order No. 56, promulgated by the Secretary of War under date of June 13th, 1918, which so far as material is as follows: "By direction of the President the Commanding Officer of each of the following camps is empowered, under the 8th Art. of War, to appoint General Court Martial whenever necessary," naming, among 33 camps, "Camp Sevier, Greenville, South Carolina." Besides the inherent power of the Commander in Chief to direct the convening of court martial, *Swain v. United States*, 165 U. S. 553, Art. 8 declares that general court martial may be appointed "when empowered by the President, by the commanding officer of any district, or force, or body of troops." The Term "district" has no technical military meaning but includes the territory occupied by a permanent military camp such as Camp Sevier. Moreover, the troops at the camp are ordinarily under the command of its commanding officer, so that the President might authorize such officer to convene general courts martial both as the commander of a district and of a body of troops.

2. The record is not defective in failing to refer to General Order 56 as authority for Special Order 172, by which the court was constituted. While courts martial are special courts of limited jurisdiction and have no presumptions to aid them, *Runkle v. United States*, 122 U. S. 543, 555; *McCloughery v. Deming*, 186 U. S. 49, 63; still it is not requisite for an inferior court to spread upon the record of each case which it tries the full pedigree of its powers. Its record need not justify its existence generally, but should show the right to try the particular case. Otherwise this record must have shown not only the special order appointing its members and General Order 56, but also that the persons making these orders were really the commanding officer of Camp Sevier and the duly elected President of the United States. Obviously such things need not be made of record because they are to be judicially recognized. So a general order of the War Department is an army regulation and is the law of the army and will surely be judicially noticed by military courts without either allegation or proof, and indeed by the civil courts as well. *Jenkins v. Collard*, 145 U. S. 547, 560; *Caba v. United States*, 152 U. S. 211, 221; *Gratiot v. United States*, 4 Howard, 80, 117.

3. If by the second contention is meant that the evidence produced to the court martial did not sufficiently show that applicant was a Captain in the Infantry of the United States Army, it must be replied that this Court, on *heab-as corpus*, is not a court of errors for the court martial. The inquiry here is not whether that court decided rightly but whether it could rightly decide at all. *Johnson v. Sayre*, 158 U. S. 109; *Swain v. United States*, 165 U. S. 553, 561; *Dynes v. Hoover*, 20 Howard 65; *McCloughery v. Deming*, 186 U. S. 49, 69. Of course the applicant may here contend that he was not in fact a person subject to military law, and was not triable by court martial although that court might have adjudged otherwise, for that denies the jurisdiction in fact of the court, and its record cannot es-

tablish its jurisdiction if indeed it had no authority to make a record.

The evidence introduced here, however, shows that Givens, having served for several months as First Lieutenant, was commissioned as a Captain September 9th, 1918, and accepted his commission September 25th, 1918. The only reply made is that there is no proof he took the oath of allegiance at any time, which is said to be the touchstone of soldierhood. In *Re Grimley*, 137 U. S. 147, 156. The oath may have been taken long since and being oral may not be capable of convenient proof, but accepting a Captain's commission, carrying the privileges and pay of that office, is amply sufficient proof that the petitioner was subject to military law. Articles of War 2 (a).

4. Captain Givens was arraigned for murder under Art. 92, and convicted of manslaughter, punishable under Art. 93. Under Art. 92 he could not be tried by a court martial for murder "committed within the geographical limits of the States of the Union in time of peace." It is said that at no time was there other than peace in the United States, and especially so after the armistice was signed with Germany prior to the promulgation of the sentence in this case. If the right of the court martial to try a military person under Art. 92 was intended to exist only in a place of war and in case the civil courts were closed, it would have been easy to say so, but a time of war is made the test, and it must be held that for military persons, at least, such a time continued from the date of the declaration of war by Congress until some formal proclamation of peace by an authority competent to proclaim it. The rapid movement of soldiers, causing the scattering of witnesses before the civil courts could act, as well as the necessity of firm discipline and full control over an army when on a war footing, are prime causes for the substitution of courts martial for civil courts in time of war. These causes existed at Camp Sevier, though the state of active operations was far removed. If in exceptional cases a time of peace may come before official recognition of it and before a demobilization of the armies, this is not such a case. And again, it must be held that the failure of the court martial's record to aver the crime to have been committed in a time of peace is not fatal. On objection duly made it should have been alleged, and doubtless would have been, but if the fact indeed existed, the failure of the record to state it is an irregularity in the record and not a real want of jurisdiction in the court. If the jurisdiction really existed, in meeting a collateral attack it may be shown either by the recitals of the record (which are neither conclusive nor exclusive evidence either way) or by independent proof. *Galpin v. Page*, 18 Wall. 350. The point is of the less practical merit because petitioner was not convicted under Art. 92 but under Art. 93, as to which a time of peace or war is immaterial. Under familiar rules, he went on trial not only for a charge of murder, but also for every lesser crime included in the offense alleged. He was not tried for murder alone, but for manslaughter and assault also, and was legally convicted of manslaughter. *Dynes v. Hoover*, 20 Howard, 65, 70.

5. Art. 93 authorized punishment "as the court martial may direct." The court could properly prescribe the kind and duration of the punishment, as it did, but the place of its execution is under legislative control. *Ex parte Karstendick*, 93 U. S. 396, 400. *Weed v. People*, 31 N. Y. 465. The time and place of execution are no part of the judicial sentence; *Schwab v. Berggren*, 143 U. S. 442, 451; *In re Cross*, 146 U. S. 271; *Ex parte Waterman*, 33 Fed. 29; *O'Brien v. Barr*, 49 N. W. (Iowa), 68; they may, under various circumstances, be added or altered after the adjournment of the term of court; *Bonner*, 151 U. S. 242; *State v. Kitchen*, 2 Hill (S. C.) 612; *Ex parte Nixon*, 2 S. C. 4; *Blond v. State*, 2 Indiana 608; *State v. Cardwell*, 95 N. C. 643; *Kingen v. Kelley*, 3 Wyoming 566; *In re Bell*, 56 Miss. 282; *Mills v. Commonwealth*, 13 Pa. State, 631; else the specified penitentiary being discontinued or destroyed, a discharge on habeas corpus would result. Other embarrassments would exist in the case of an army in the field. Capt. Givens has been lawfully sentenced to confinement at hard labor for 10 years, and should not be discharged until he has lawfully served it, or been pardoned or paroled. Under Article of War 42 and under Sec. 2 of the Act of March 4th, 1915, 38 Stat. L. 1084, he may lawfully be confined on this sentence in any penitentiary directly or indirectly under the control of the United States. Further, in promulgating this sentence, after confirmation by the President, the Acting Adjutant General, in his order accompanying the court martial record which was sent with the prisoner as a commitment, states that the United States Penitentiary at Atlanta, Georgia, has been designated as the place of confinement. It appears from the evidence that a recommendation of this place by the Secretary of War had accompanied the proceedings when submitted to the President for his confirmation, and there is proof that the designation of the place of confinement in this way, separately from the confirmation proper of the sentence, is the uniform practice of the War Department. It is argued that it should be assumed that the President had orally directed this place of confinement in accordance with the sentence of the court, and not that the Adjutant General had done so; *United States v. Page*, 137 U. S. 673; *United States v. Fletcher*, 148 U. S. 84, 89; *Wolson v. Chapman*, 101 U. S. 755, 770; and see as to presumption of regularity as to the place designated for imprisonment; *Ex parte Wilson*, 114, U. S. 417, 421. A contrary view could only result in the petitioner's being held until the place could be designated; *Bonner*, 151 U. S. 242. He would then lose credit for the time he has heretofore been improperly confined.

If there is any objection to his present place of confinement, it can doubtless be changed on such showing as could be made to the President in making now an original designation.

The view will be adopted that the confinement has been and is lawful and the writ of habeas corpus will be discharged and the petitioner remanded to custody.

This 2 day of Feb'y, 1920.

SAM'L H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office Feb'y 2nd, 1920.

O. C. FULLER,
Clerk,
By JON DEAN STEWARD,
Deputy.

43 In the District Court of the United States for the Northern
District of Georgia.

In the Matter of WM. J. GIVENS,

VS.

FRED G. ZERBST, Warden,

Habeas Corpus.

Petition for Appeal.

And now comes William J. Givens and respectfully represents that on the 2nd day of February, 1920, a judgment and order was entered by this Court dismissing his petition for habeas corpus, and remanding him into custody of Fred G. Zerbst, Warden of United States Penitentiary, Atlanta, Ga.

And your petitioner respectfully shows that in said record proceedings, judgment and order in this cause, manifest errors have intervened to the prejudice and injury of your petitioner, all of which will appear more in detail in the assignment of error which is filed with this petition.

Wherefore, your petitioner prays that an appeal may be allowed him from said judgment to the United States Supreme Court.

JOHN S. STRAHORN,
Annapolis, Md.;
TROUTMAN & FREEMAN,
Attorneys at Law for Petitioner.

Filed in Clerk's Office, 28th day of February, 1920.

O. C. FULLER,
Clerk,
By JON DEAN STEWARD,
Deputy.

Order Allowing Appeal.

The foregoing petition of Wm. J. Givens for appeal and consideration of the assignment of errors presented therewith it is ordered that the appeal as prayed for be, and the same is hereby allowed.

Cost bond on the appeal is hereby fixed in the sum of
\$250.00.

44 This 28th day of February, 1920.

SAML H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office, 28th day of Feb'y, 1920.

O. C. FULLER,
Clerk,
By JON DEAN STEWARD,
Deputy.

In the District Court of the United States for the Northern District
of Georgia.

In re WM. J. GIVENS, Petitioner,

vs.

FRED G. ZERBST, Warden.

Habeas Corpus.

Assignments of Error.

Now comes William J. Givens, by John S. Strahorn, and Troutman and Freeman, his attorneys, and in connection with his petition for an appeal, says that in the record and proceedings and judgment and order, and during the trial of the above stated cause in said Court, error has intervened and was committed to his prejudice and this petitioner here assigns the following errors, to-wit:

1. The court erred in not holding that this petitioner and appellant is wrongfully held and illegally imprisoned and in discharging the writ of habeas corpus, and remanding him into custody of respondent. The court erred in not holding that this petitioner is held and imprisoned without due process of law and in violation of the Fifth Amendment of the Constitution of the United States.
2. That the court-martial was not legally constituted.
3. That the record as made and authenticated did not show that petitioner was amenable to trial by military court.
4. That there was no authority to try accused for murder committed in the United States during the World War; and even if there was such authority, the pleadings as made did not show such authority.
- 45 5. That the confinement of petitioner is unlawful; not carried out in accordance with the findings of the court-martial.
6. That the court erred in permitting the introduction of evidence to supplement the record as so made and authenticated.
7. The court erred in dismissing the petition for habeas corpus, discharging the writ, remanding appellant into the custody of respondent.

By reason whereof, this petitioner and appellant prays that said judgment and order may be reversed and that he be ordered discharged.

JOHN S. STRAHORN,
Annapolis, Md.;
TROUTMAN & FREEMAN,
Atlanta, Ga.,
Attorneys for Petitioner and Appellant.

Filed in Clerk's Office, 28th day of Feb'y, 1920.

O. C. FULLER,
Clerk,
By JON DEAN STEWARD,
Deputy.

46 In the District Court of the United States for the Northern District of Georgia.

In the Matter of Wm. J. GIVENS, Petitioner,

VS.

FRED G. ZERNST, Warden.

Habeas Corpus.

Cost Bond.

Know all men by these presents, That we, Wm. J. Givens, as principal, and Globe Indemnity Co., as surety, are held and firmly bound unto the United States of America in the full and just sum of Two Hundred and Fifty & 00/100 (\$250.00) Dollars, to be paid to the said United States of America certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 9th day of March, in the year of our Lord One Thousand Nine Hundred and Twenty.

Whereas, lately at the October term, 1919, at the District Court of the United States for the Northern District of Georgia in a suit pending in said court between Wm. J. Givens and the United States of America, a judgment was rendered against the said Wm. J. Givens dismissing his petition for Habeas Corpus and remanding him into the custody, and for costs, and the said Wm. J. Givens having obtained an appeal to the United States Supreme Court to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such, That if the said Wm. J. Givens shall prosecute his appeal to effect and answer

all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

This 9 day of March, 1920.

[SEAL.]

WM. J. GIVENS, [L. s.]
Surety: GLOBE INDEMNITY COM-
PANY, [L. s.]
E. A. ERWIN,

FORREST ADAIR, [L. s.]
Attest.

Approved by:
SAM'L H. SIBLEY,
U. S. Judge.

This 11th day of March, 1920.

Filed in Clerk's Office March 11th, 1920.

O. C. FULLER,
Clerk.

47 In the District Court of the United States for the Northern
District of Georgia.

WM. J. GIVENS, Petitioner and Appellant,

vs.

FRED G. ZERBST, Warden, Appellee.

Habeas Corpus.

Præcipe for Record.

The clerk of this court is hereby directed to prepare and certify a transcript of the record in the above entitled cause for the use of the Supreme Court of the United States by including therein the following:

1. The petition for Habeas Corpus and the order of Court thereon.
2. The amendment to the petition and the order of court allowing the same; the amendment to the amendment to the petition and the order of the court allowing same.
3. The writ of Habeas Corpus issued by the court together with the entry of service entered thereon.
4. The answer of respondent together with the Exhibits attached thereto.
5. The traverse to the answer of respondent.
6. The order of court discharging the writ and remanding the petitioner to custody.

7. The opinion of the court in the above entitled cause.
8. The præcipe for record.
9. The notice of the filing of the præcipe served upon the respondent by the attorneys for the appellant.
10. The cost bond, with the approval of the court.
11. The original Citation.
12. The clerk's certificate.

This the 9th day of March, 1920.

JOHN S. STRAHORN,
TROUTMAN & FREEMAN,
Attorneys for Appellant.

Filed in Clerk's Office, March 11th, 1920.

O. C. FULLER,
Clerk,
By C. A. McGREW,
Deputy.

- 48 In the District Court of the United States for the Northern District of Georgia.

WM. J. GIVENS, Petitioner and Appellant,

vs.

FRED G. ZERBST, Warden and Appellee.

Habeas Corpus.

Notice of Filing Præcipe for Record and Affidavit of Service.

To Fred. G. Zerbst, Respondent and Appellee in the above entitled cause:

Please take notice that on the 9th day of March, 1920, the undersigned filed with the clerk of this court a præcipe for the record to be transmitted to the Supreme Court of the United States on the appeal taken in the above cause, a copy of which præcipe is herewith served on you.

This 9th day of March, 1920.

JOHN S. STRAHORN,
TROUTMAN & FREEMAN,
Attorneys for Appellant.

Personally appeared before me, R. H. Freeman, the subscriber, and makes oath that he delivered a copy of the within notice of the filing of the præcipe to Fred G. Zerbst, the respondent and appellee, in the above entitled cause, on the 10th day of March, A. D. 1920.

R. H. FREEMAN,

Sworn to and subscribed before me this 11th day of March, 1920.

C. A. MCGREW,
*Deputy Clerk, U. S. District Court, Northern
District of Georgia.*

Filed in Clerk's Office, March 11th, 1920.

O. C. FULLER,
Clerk,
By C. A. MCGREW,
Deputy.

49 UNITED STATES OF AMERICA, ss:

To Fred G. Zerbst, Warden of the United States Penitentiary at Atlanta, Ga., or his Attorney of Record, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal, filed in the Clerk's Office of the District Court of the United States for the Northern District of Georgia, wherein William J. Givens is petitioner and appellant and you are respondent and appellant, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States this 28th day of February, in the year of our Lord one thousand nine hundred and twenty.

SAMUEL SIBLEY,
*Judge of the District Court for
the Northern District of Georgia.*

Filed in Clerk's Office 28th day of Feby., 1920.

O. C. FULLER,
Clerk,
By JON DEAN STEWARD,
Deputy.

On this 28th day of February, in the year of our Lord, one thousand nine hundred and twenty, personally appeared H. B. Troutman before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Hooper Alexander, one of the Attorneys of Record for respondent and appellee, Fred G. Zerbst in the above stated case.

H. B. TROUTMAN.

Sworn to and subscribed the 28 day of February, A. D., 1920.

[Seal U. S. District Court, N. D. Georgia.]

JON DEAN STEWARD,
*Deputy Clerk, U. S. Court,
Northern District of Georgia.*

Filed in Clerk's Office 28th day of Feby., 1920.

O. C. FULLER,

Clerk,

By JON DEAN STEWARD,

Deputy.

[Endorsed:] Citation. Filed in Clerk's Office 28th day of Feby., 1920. O. C. Fuller, Clerk by Jon Dean Steward Deputy C'k. Law offices of Troutman & Troutman, Atlanta, Ga.

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Clerk's Certificate.

UNITED STATES OF AMERICA,
Northern District of Georgia.
Northern Division:

I, Olin C. Fuller, Clerk of the District Court of the United States in and for the Northern District of Georgia, do hereby certify that the foregoing and attached forty-nine pages of printing and writing contains a true, full, correct and complete copy of the original record, petition for appeal, order granting appeal, assignments of error, praecipe for record, notice of filing praecipe for record and affidavit thereon, cost bond and the original Citation and affidavit thereon and all proceedings had in the case of William J. Givens, versus Fred G. Zerbst, Warden United States Penitentiary, Atlanta, Georgia, prepared in accordance with praecipe of counsel, as fully as the same remains on file and of record in my office at Atlanta, Georgia, except that the original Citation and Affidavit of Service thereon is annexed hereto instead of a copy thereof.

In testimony whereof I hereunto set my hand and the seal of the said District Court at Atlanta, Georgia, this 12th day of March, A. D., one thousand nine hundred and twenty.

OLIN C. FULLER,
*Clerk United States District Court,
Northern District of Georgia.*

[Seal U. S. District Court, N. D. Georgia.]

Endorsed on cover: File No. 27563. N. Georgia D. C. U. S. Term No. 808. William J. Givens, appellant, vs. Fred G. Zerbst, Warden of the United States Penitentiary at Atlanta, Georgia. Filed March 19th, 1920. File No. 27563.